

1 DAVID C. WEISS  
Special Counsel  
2 LEO J. WISE  
Principal Senior Assistant Special Counsel  
3 DEREK E. HINES  
Senior Assistant Special Counsel  
4 SEAN F. MULRYNE  
CHRISTOPHER M. RIGALI  
5 Assistant Special Counsels  
950 Pennsylvania Avenue NW, Room B-200  
6 Washington, D.C. 20530  
Telephone: (771) 217-6090  
7 E-mail: SFM@usdoj.gov; sean.mulryne@usdoj.gov  
Attorneys for the United States

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9 Attorneys for Plaintiff  
UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 ALEXANDER SMIRNOV,

16 Defendant.  
17

No. CR 2:24-cr-00091-ODW

GOVERNMENT'S OPPOSITION TO  
DEFENDANT'S MOTION TO REOPEN  
DETENTION HEARING AND TO  
IMPOSE CONDITIONS OF PRETRIAL  
RELEASE

18  
19 Defendant Alexander Smirnov ("Defendant") has moved to reopen the detention  
20 proceedings that this Court held and concluded three months ago, on February 26, 2024,  
21 and thus is seeking—once again—his pretrial release subject to conditions. ECF No. 75  
22 ("Def. Mot."). Pursuant to the Court's local rules, a hearing was requested for June 24,  
23 2024. Because Defendant has not presented new information that has a material bearing  
24 on the issue of detention, as required by statute, the Court should deny the motion (and do  
25 so without a hearing, as it is clear from the papers that Defendant has failed to satisfy his  
26 burden). As this Court and the Ninth Circuit have recognized, Defendant presents a  
27 substantial flight risk for whom pretrial detention is both appropriate and necessary.  
28 Accordingly, Defendant's motion to reopen his detention hearing should be denied.

1 Dated: May 31, 2024

2 Respectfully submitted,

3 DAVID C. WEISS  
4 Special Counsel

5 /s/\_\_\_\_\_

6 LEO J. WISE  
7 Principal Senior Assistant Special Counsel

8 DEREK E. HINES  
9 Senior Assistant Special Counsel

10 SEAN F. MULRYNE  
11 CHRISTOPHER M. RIGALI  
12 Assistant Special Counsels

13 United States Department of Justice  
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1 the country. In this court's considered opinion, the only  
2 effective measure to assure Smirnov makes his court  
3 appearances is detention.

4 *Id.* at 2.

5 On February 26, 2024, the Court permitted a further hearing on detention, which it  
6 was not required to hold, as part of its *de novo* review of the magistrate judge's bail  
7 proceedings. At the outset of the hearing, the Court explained that it must determine  
8 whether there are "conditions or combinations of conditions which will assure that  
9 [Defendant] will show up for trial," and the Court explained that it had reviewed "all of  
10 the papers" and would "entertain further discussion," but "to let you know what I'm  
11 thinking, I'm not satisfied that there are conditions or combinations of conditions which  
12 will ... satisfy my concern as to whether or not [Defendant] will not flee the jurisdiction."  
13 ECF No. 38, at 6. During the hearing, the Court and the parties addressed multiple issues  
14 including Defendant's foreign contacts and financial situation. At the conclusion of the  
15 hearing, the Court stated that "I have not changed my mind." *Id.* at 25. The Court noted  
16 again that "I've read everyone's papers, I understand the arguments," *id.* at 24, and  
17 continued that "[t]here is nothing garden variety about this case. To compare this to all  
18 the cases that we normally see, this is an outlier." *Id.* at 25.

19 Defendant appealed the Court's pretrial detention order to the Ninth Circuit. *See*  
20 *United States v. Alexander Smirnov*, No. 24-1133 (9th Cir.). A panel of the Ninth Circuit  
21 affirmed this Court's detention order, holding that "[t]he district court correctly found that  
22 the government has met its burden of showing, by a preponderance of the evidence, that  
23 'no condition or combination of conditions will reasonably assure the defendant's  
24 appearance,' and that appellant thus poses a risk of flight." No. 24-1133, ECF No. 14  
25 (brackets and citations omitted). The Ninth Circuit just recently denied Defendant's  
26 Petition for Rehearing with Suggestion for Rehearing En Banc. No. 24-1133, ECF No.  
27 16.

28 Nearly three months after the Court's revocation order, arrest warrant, and hearing,

1 Defendant now moves for the Court to reopen the detention hearing, release Defendant  
2 from custody, and impose conditions.

3 II. ARGUMENT

4 Pursuant to 18 U.S.C. § 3142(f)(2), a detention hearing

5 may be reopened, before or after a determination by the judicial  
6 officer, at any time before trial if the judicial officer finds that  
7 information exists that was not known to the movant at the time  
8 of the hearing and that has a material bearing on the issue  
9 whether there are conditions of release that will reasonably  
10 assure the appearance of such person as required and the safety  
11 of any other person and the community.

12 *Id.*; see also *United States v. Watson*, 475 F. App'x 598, 600 (6th Cir. 2012) (“[T]he new  
13 information must be of a nature that would increase the likelihood that the defendant will  
14 appear at trial[.]”).

15 Defendant now moves to reopen the detention proceedings under this provision,  
16 arguing that the “new information” warranting another detention hearing is a letter by  
17 Defendant’s eye doctor, Dr. H. George Tanaka, dated May 17, 2024, in which Dr. Tanaka  
18 notes Defendant’s glaucoma diagnosis and the need for continued treatment including  
19 medications and surgery. Def. Mot. at 3-4; see also Exh. 1 to Def. Mot. (Dr. Tanaka’s  
20 letter). However, this information is neither new nor was it “not known to the movant at  
21 the time of the hearing[.]” 18 U.S.C. § 3142(f)(2). Indeed, Defendant acknowledges in  
22 his motion that his severe eye condition and the need for treatment and surgery were well  
23 documented in Defendant’s “earliest filings.” Def. Mot. at 4 (citing ECF No. 33). In other  
24 words, the basis for Defendant’s current motion was known to the Court and the parties at  
25 the time of his detention hearing on February 26, 2024, when defense counsel cited  
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1 Defendant's eye condition and treatment as a reason for Defendant's pretrial release.<sup>1</sup>  
2 Moreover, Defendant has filed multiple emergency *ex parte* motions with the Court since  
3 March 11, 2024, each seeking relief related to Defendant's eye condition including  
4 requests for medical furloughs and/or transportation to San Francisco for surgery with Dr.  
5 Tanaka, an order requiring eye surgery by a government contractor, and the immediate  
6 provision of eye drops. *See, e.g.*, ECF Nos. 52, 60, 67, 70. With the exception of  
7 Defendant's most recent motion, which remains pending, the Court has denied  
8 Defendant's previous motions. *See* ECF Nos. 56, 63, 69. And the Ninth Circuit previously  
9 affirmed the Court's denial of temporary release. *See* No. 24-1133, ECF No. 14 ("[T]he  
10 district court did not err by subsequently concluding that appellant had not shown  
11 compelling reasons for temporary release under 18 U.S.C. § 3142(i).").<sup>2</sup>  
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17 <sup>1</sup> The hearing before this Court on February 26, 2024, concluded with defense  
18 counsel raising "some eye medication that [Defendant] needs," and the Court responded,  
19 "Let's go off the record." ECF No. 38, at 25. Notably, earlier in the hearing, defense  
20 counsel mentioned Defendant's medical needs as a basis for his pretrial release,  
21 representing that Defendant takes daily medication for an eye condition and "has another  
22 surgery scheduled." *Id.* at 16. Consequently, Dr. Tanaka's letter does not present new  
23 information previously unknown to the Court or the parties. Moreover, Defendant recently  
24 has been transferred from Santa Ana City Jail to MDC-Los Angeles, which should help to  
25 facilitate any requisite treatment or procedure.

26 <sup>2</sup> Defendant argues that "an additional basis to reopen the detention hearing" is his  
27 current placement in the "Secure (Special) Housing Unit ('SHU')" of MDC-Los Angeles.  
28 Def. Mot. at 4-5 n.1. According to Defendant, his SHU placement "may complicate his  
medical treatment . . . and impair his trial preparation." *Id.* But Defendant has provided  
no factual information to support his assertion that his current placement in the SHU has  
in fact complicated his medical treatment. Furthermore, Defendant, raised similar  
concerns during the hearing before this Court on February 26, 2024, *see* ECF No. 38, at  
11-12, and those concerns did not provide an ample basis for release then nor do they now.

1 Defendant's motion should be denied because there is no new information or basis  
2 to justify reopening the detention proceedings, let alone pretrial release. But even  
3 assuming *arguendo* that such information or a basis existed, the fact remains that  
4 Defendant is a substantial flight risk for whom no conditions or combination of conditions  
5 will ensure his appearance. The Court already has weighed the relevant facts and  
6 circumstances and concluded that Defendant is a flight risk warranting pretrial detention.  
7  
8 See ECF No. 15. The Ninth Circuit affirmed the Court's ruling. See No. 24-1133, ECF  
9 No. 14. Nothing has changed to alter or disrupt this Court's analysis and conclusion.  
10 Defendant, in his motion, proposes another condition of release: "round-the-clock  
11 monitored security, paid for by [Defendant]." Def. Mot. at 6; *see also* Exh. 2 to Def. Mot.  
12 (letter from Official Security, Inc.). However, Defendant already proposed this condition  
13 during the hearing held before this Court on February 26, 2024. See ECF No. 38, at 15  
14 ("If the Court wants, we will hire private security to monitor his [sic] 24 hours a day where  
15 he is."). This proposal is not new, does not guarantee Defendant's appearance at trial—  
16 especially when he would be paying and financing the very individuals tasked to watch  
17 him—and already has been rejected by this Court.<sup>3</sup>  
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26 <sup>3</sup> Defendant's proposed arrangement also would invite an uncomfortable question  
27 about whether a defendant, whom multiple courts have found presents a significant flight  
28 risk, should be able to essentially pay for his pretrial release based on his substantial  
personal wealth—the extent of which Defendant misrepresented to Pretrial Services, as  
the Court is aware. See ECF No. 38.

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III. CONCLUSION

Based on the above, the Court should address Defendant's request on the papers without a hearing, and should deny Defendant's Motion to Reopen Detention Hearing and To Impose Conditions of Pretrial Release.

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorneys of record for Defendant.

Dated: May 31, 2024

/s/

LEO J. WISE  
Principal Senior Assistant Special Counsel

DEREK E. HINES  
Senior Assistant Special Counsel

SEAN F. MULRYNE  
CHRISTOPHER M. RIGALI  
Assistant Special Counsels